

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
11 U.S. SECURITIES AND EXCHANGE
12 COMMISSION,

13 Applicant,

14 v.

15 DANE S. FABER,

16 Respondent

17 No. CV-09-80018 MMC MISC

18
19
20
21
22
23
24
25
26
27
28 **ORDER DIRECTING COMMISSION TO
SUPPLEMENT APPLICATION FOR
ORDER DIRECTING COMPLIANCE
WITH ORDER OF COMMISSION;
CONTINUING HEARING**

Before the Court is the U.S. Securities and Exchange Commission's ("Commission") "Application under Section 21(e)(1) of the Securities Exchange Act of 1934 for an Order Directing Compliance with an Order of the Securities and Exchange Act," filed February 10, 2009, by which the Commission seeks, pursuant to 15 U.S.C. § 78u(e)(1), an order directing respondent Dane S. Faber ("Faber") to comply with an order issued by the Commission on February 10, 2004. Faber has not filed a response to the Application. Having read and considered the papers filed in support of the Application, the Court finds it appropriate, for the reasons set forth below, to direct the Commission to supplement its Application and to continue the hearing.

In an opinion issued February 10, 2004, the Commission sustained findings made by the National Association of Securities Dealers, Inc. ("NASD") that Faber had violated

1 specified federal acts, federal regulations, and NASD rules. (See Appl. Ex. 1.) In addition,
 2 the Commission found monetary and other sanctions imposed by the NASD were “neither
 3 excessive nor oppressive.” (See Appl. Ex. 1 at 8.) The opinion concludes with the
 4 following sentence: “An appropriate order will issue.” (See *id.*) The Commission has not,
 5 however, filed with this Court the order issued by the Commission. As a result, the order
 6 the Commission seeks to enforce herein is not before the Court and the Court declines to
 7 grant the Application in its absence.¹

8 Accordingly, the Commission is hereby DIRECTED to file with the Clerk of the Court
 9 and serve on Faber, no later than May 8, 2009, the following documents: (1) the order
 10 issued by the Commission following the issuance of its February 10, 2004 opinion; and
 11 (2) a declaration setting forth the calculation of interest that, if the Court were to issue an
 12 order directing Faber to comply with Commission’s order, would be due as of June 5, 2009.

13 The Commission is further DIRECTED to serve Faber with a copy of the instant
 14 order, and to file proof of such service, no later than May 8, 2009.

15 If Faber wishes to file a response to the Commission’s supplement filings, Faber
 16 shall file such response with the Clerk of the Court, and serve it on counsel for the
 17 Commission, no later than May 22, 2009.

18 The hearing on the above-titled Application is hereby CONTINUED from April 24,
 19 2009 to June 5, 2009, at 9:00 a.m.

20 **IT IS SO ORDERED.**

21
 22 Dated: April 21, 2009


 23 MAXINE M. CHESNEY
 United States District Judge

24
 25 ¹In the Application, the Commission argues, for example, the “interest rate that the
 Court should use is the weekly average one-year constant maturity Treasury yield.” (See
 Appl. at 8:26-27.) The decision issued by the NASD, however, states interest is to
 “calculated at the rate established for the underpayment of income taxes in Section 6621(a)
 of the Internal Revenue Code, 26 U.S.C. § 6621(a).” (See Appl. Ex. 2 at 19.) Because the
 Commission has not submitted the order issued by the Commission, it is unclear whether
 the Commission sustained the method of calculation set forth by the NASD or, instead,
 found a different method of calculation should be used.